

***Fenton v Police* [2014] SASC 167 (7 November 2014) – Supreme Court of South Australia**

‘Aggravated assault’ – ‘Alcohol’ – ‘Evidence of distress’ – ‘Expert testimony’ – ‘Physical violence and harm’ – ‘Uncooperative witness’

Charge/s: Aggravated assault – (Circumstance of aggravation: that the defendant committed the offence knowing the victim was his domestic partner.)

Appeal Type: Appeal against conviction.

Facts: The defendant assaulted the victim by pushing her onto the floor with his knees in her back, twisting her arms and forcing her face into the floor. At trial, the defendant claimed he was acting in self-defence. Both the defendant and the victim were severely intoxicated.

Issue/s:

1. Whether the Magistrate erred by not taking into account inconsistencies in the victim’s evidence.
2. Whether the Magistrate should have left certain matters for expert evidence.
3. Whether the Magistrate erred by relying on evidence of the victim’s distress as observed by police.

Decision and Reasoning: Blue J dismissed all grounds of appeal.

1. In relation to the inconsistencies in the victim’s account, his Honour at [22] stated that the Magistrate in fact did consider this in relation to the victim’s credibility as a witness, but it did not have a substantial impact on the case. The second ground of appeal, which was that the victim gave new information in cross-examination that she had not previously given in her witness statements was dismissed for similar reasons (See [26]). The third ground of appeal was that the Magistrate failed to have regard to the victim’s ‘guarded and defensive’ answers during cross-examination. This was rejected – the Magistrate had the benefit of seeing the victim give evidence. It was open to him to make a favourable assessment of her credibility.
2. Blue J acknowledged that had the Magistrate gone further in making conclusions regarding the consistency of bruises to the victim’s back with the victim’s account and the potential effect of alcohol on self-control, this may have transgressed into the realms of expert evidence. However, the Magistrate only made limited use of his own common sense and experience when making conclusions with respect to the bruises on the victim’s back and the potential impact of alcohol. It is common knowledge that - alcohol can reduce inhibitions which can lead to a loss of self-control and if a person is disposed to be aggressive, alcohol can lead a person to act aggressively. The Magistrate was entitled to make limited use of these observations without needing expert evidence.
3. On the defendant’s version of events, the victim’s distress was caused by embarrassment about, among other things, her own conduct of striking and slapping the defendant. Blue J held that it was not self-evident that a person in the victim’s position would have exhibited distress as a result of embarrassment

as submitted by the defendant. The Magistrate was not obliged to expressly reject this possibility. He used the evidence of distress legitimately.